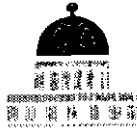


LAW OFFICES OF TIMOTHY YARYAN



CIVIL LAW
ENVIRONMENTAL LAW
HAZARDOUS WASTE AND TOXICS LAW
MUNICIPAL AND REDEVELOPMENT LAW
NATURAL RESOURCES
WATER LAW

THE ELEVENTH AND L BUILDING
1127 ELEVENTH STREET, SUITE 210
SACRAMENTO, CALIFORNIA 95814
(916) 552-6833 Fax 448-8432
EMAIL: THBY@calweb.com

GOVERNMENT RELATIONS
LEGISLATIVE ADVOCACY
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TO: Joseph Edmiston, FAICP
MRCA Executive Officer

FROM: Timothy Yaryan, Esq.
MRCA Legislative Counsel and Advocate

RE: Bill Analysis of SB 1595 (Kehoe)
Fire Prevention Fuels Management

DATE: January 30, 2009

RECEIVED
MOUNTAINS RECREATION
FEB - 9 2009
& CONSERVATION
AUTHORITY-MALIBU

BILL HISTORY

SB 1595 (Kehoe) was chaptered into law September 27, 2008 (Chapter 366, Stats 2008) and became effective January 1, 2009. It was a consent bill, receiving no negative votes throughout the legislative process.

AUTHOR'S INTENT

Senator Christine Kehoe's Legislative Director Linda Barr was the person responsible for staffing this bill. The bill was introduced and sponsored by Senator Kehoe (D – San Diego) in response to the Southern California wildfires, many of which affected parts of her district. According to Ms. Barr, Kehoe's intent was to expand existing defensible space laws to include manmade combustible materials, such as deck furniture, wood piles, propane tanks and other man-made items. In so doing, the bill expanded the scope of responsibility for defensible space by adopting a "fuels management," as opposed to a "brush management" approach to fire prevention. *By requiring added responsibility for "fuel management," SB 1595 squarely placed a new and expanded responsibility on property owners.* According to the author, "SB 1595 would update "brush management" regulations to "fuel management," incorporating lessons learned during the 2003 and 2007 fires regarding ignition sources and patterns. The purpose of fuels management is to reduce the likelihood of shrub-to-structure, structure-to-structure and/or structure-to-shrub ignition." (*SB 1595 Senate Natural Resources and Water Committee Analysis, March 25, 2008*)

Additionally, according to the author, mapping areas prone to severe fire weather conditions, such as Santa Ana and other hot, dry winds, will allow future land use decisions to include appropriate design and location requirements. Santa Ana, Mono, and Diablo winds can blow through canyons and down mountain sides at 50 or 60 miles per hour. As such they have the potential of transforming wildfires into conflagrations. Although the fire hazard severity maps for State Responsibility Areas (SRA) have just been recently updated for the first time in over 20 years; updates in Local Responsibility Area (LRA) maps are pending. These updates do not include severe wind as a factor in determining fire risk. This bill would require the winds to be included in the severity maps. *(SB 1595, Assembly Floor Analysis, August 15, 2008)*

BACKGROUND AND EXISTING LAW

The Board of Forestry is required to identify all lands where the state has the primary responsibility for preventing and suppressing fires. These state responsibility areas (SRA'S) are generally lands that are largely covered by trees, brush, grass, and other undeveloped lands. All other lands are primarily the responsibility of local responsibility areas (LRA'S) or federal agencies.

Public Resources Code 4202 requires the director of the Department of Forestry and Fire Protection (CDF) to classify state responsibility areas into fire hazard severity zones for the purpose of identifying, improving fire prevention, and protection. Each zone shall be based on factors including fuel loading, slope, and fire weather. Similarly, Government Code 51178 requires the director to identify the fire hazard severity zones in local responsibility areas, also based on fuel loading, slope, fire weather, and other relevant factors. A local agency has discretion to alter these zones for more effective fire protection.

Government Code 51182 and Public Resources Code 4291 requires occupied structures within a very high fire hazard severity zone or a state responsibility area to maintain a "defensible space" no greater than 100 feet from each side of the structure, but not beyond the property line unless by state or local law or ordinance. A greater distance of "defensible space" may be specified by an insurance company, state law, local ordinance rule, or regulation. The amount of modification necessary shall take into account the flammability of the structure and maintenance should be such that "under average weather conditions, a wildfire would be unlikely to ignite the structure. The greatest fuel management should occur within 30 feet of the structure.

BILL SUMMARY

SB 1595 identifies defensible space requirements and recasts them in terms of "fuels management" instead of "vegetation or brush management;" requires a person who owns or controls a building or structure adjacent to an SRA or LRA to maintain a firebreak of

all combustible materials, including manmade items, such as propane tanks, wood piles, and deck furniture; and requires the California Department of Forestry and Fire Protection to map Santa Ana, Mono, and Diablo winds that have been identified as a major cause wild fires spread. Specifically:

- SB 1595 adds to the factors that must be considered in identifying very high fire hazard zones in LRA'S and changes defensible space requirements in both LRA'S and SRA'S.
- Requires the director of CDF to consider Santa Ana, Mono, and Diablo winds when identifying very high fire hazard severity zones in LRA'S.
- Adds additional definitions, including defining "fuel" to mean both any combustible natural vegetation and manmade materials, especially petroleum products that are likely to ignite during a wildfire in a very high fire hazard severity zone. Also defines "fuel management" and makes other definitions.
- Establishes "defensible space" requirements.
- Modifies defensible space requirements to not only require the removal of flammable vegetation but also manmade objects and improvements attached to structures that may ignite during a wildfire.
- Provides local agencies and insurers may require greater "defensible space" than required by state regulations providing findings that such a clearing is necessary to "significantly reduce" the risk of ignition of and spread of wildfires.
- Requires property owners to remove any portions of trees within 10 feet of a chimney or stovepipe; maintain vegetation adjacent to the dwelling/structure to be free of dead or dying wood; and maintain the roof to be free of leaves, needles, and other combustible material.
- Requires that fallen litter under vegetation adjacent to a structure be removed.
- Makes findings regarding the importance of a comprehensive fire prevention strategy and the intent of the Legislature to incorporate lessons learned from the state's wild land fires of 2003 and 2007.
- Pre-empts applicable local ordinances, including those of charter cities and counties, but permits local agencies to adopt more restrictive fire and public safety requirements.

HOMEOWNER RESPONSIBILITY

SB 1595 amended the Government Code and Public Resources Code, modifying and adding definitions and measures for fire prevention and fuel modification. Government Code Section 51182 (a), and Public Resources Code Section 429 (a) defines the party responsible for maintaining defensible space as:

"A person who owns, leases, controls, operates, or maintains an *occupied dwelling* or *occupied structure* in, upon, or adjoining any mountainous area, forest-covered land, brush-covered land, grass-covered land, or any land that is covered with flammable material, which area or land is within a very high fire hazard severity zone designated by the local agency pursuant to Section 51179, shall at all times do the following."

The interpretation of the plain language of these code sections places the responsibility of maintaining the defensible space upon the owner of an occupied structure or dwelling (private land owner), opposed to simply a landowner. Thus, the section places new and added responsibility upon a home owner whose property abuts the state or local park property for fuel management.

The issue of responsibility for maintaining the defensible space appears to arise when defining the area required for fuel modification in Government Code Section 51182 (a)(1), and Public Resources Code Section 429 (a)(1). These sections state that the owner of the structure or dwelling must:

“Maintain defensible space no greater than 100 feet from each side of the structure, but not beyond the property line unless allowed by state law, local ordinance, or regulation and as provided in paragraph (2).”

The question of who is responsible for maintaining the defensible space appears to become an issue when that space crosses beyond the property line of the private land owner and encroaches on state or local park property. Paragraph (2) provides that a *“Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted with written consent by the adjacent landowner.”*

Absent a state law, local ordinance, rule, or regulation, or an insurer’s requirements, a home owner’s responsibility for fuel modification ends at his/her property line. A private land owner cannot be responsible for clearing fuel from state or locally owned park land without some additional authority making them responsible to do so and without consent from the adjacent land owner.

Conversely, ordinances passed by Los Angeles and Ventura counties (L.A. County Code Title 32317.2.2, Ventura County Fire Code H105, and L.A. City Fire Code 57.21.07) have similar provisions to the above sections. These ordinances have made changes to the language to include “land ownership,” opposed to just “building ownership.” The effect of this language is that it has placed the responsibility for fuel management on the adjacent landowner to do the fuel clearing if the clearance zone falls on their property. This policy has created a situation where homeowners living adjacent to park property expect that maintaining defensible space requirements is now the responsibility of the Mountains Recreation and Conservation Authority. These ordinances and policies are clearly “less restrictive” than state law in that they attempt to relieve the homeowner of “defensible space” responsibility and liability and, as such, are in contravention of and pre-empted by Section 51175 (b) of the Government Code, which provides:

(b) The prevention of wild land fires is not a municipal affair, as that term

is used in Section 5 of Article XI of the California Constitution, but is, instead, a matter of statewide concern. It is the intent of the Legislature that this chapter applies to all local agencies, including, but not limited to charter cities, charter counties, and charter cities and counties. This subdivision shall not limit the authority of a local agency to impose more restrictive fire and public safety requirements, as otherwise authorized by law.

COMMENTS:

As discussed in the Assembly Floor Analysis of AB 1595, CAL FIRE defines defensible space, in part, as: "The area within the perimeter of a parcel where basic wildfire protection practices are implemented, providing the key point of defense from an approaching wildfire or escaping structure fire." In addition to providing firefighters a working environment to protect buildings and structures from encroaching wildfires, defensible space also minimizes the chance that a structure fire will escape to the surrounding wild land. It is well documented that a home with adequate defensible space faces a higher probability of surviving a wildfire.

In 2006, the Board adopted defensible space guidelines that provide property owners with examples of fuel modification measures in order to comply with existing defensible space requirements in SRA'S. The guidelines suggest more intensive fuel clearance within 30 feet of a structure and emphasize the vertical and horizontal separation of trees and shrubs, for example, between 30 and 100 feet. They acknowledge that separation between vegetation will depend on slope, vegetation size and type, and other fuel characteristics. However, these guidelines are limited to vegetation management and silent with respect to other sources of combustion such as wood decks, outdoor furniture, wood piles, and propane tanks. Additionally, existing guidelines typically require the removal or clearance of flammable vegetation only.

This bill attempts to expand this limited view of defensible space by focusing instead on "fuels management," defined as "the act of controlling flammability and reducing resistance to control of fuels (any combustible material) through mechanical, chemical, biological, or manual means, or by fire in support of land management objectives." Additionally, the bill somewhat mirrors CAL FIRE'S defensible space guidelines that suggest more intensive clearance 30 feet from a structure. While this absolute distance may not be entirely appropriate for all regions of the state or vegetation types, the bill states that "The intensity of fuels management may vary within the 100 – foot radius of the structure."

The bill also embodies a "system approach" to fuel management, recognizing that a homeowner should consider building material, building standards, geography, and type of vegetation when determining the amount and intensity of defensible space. It does this, in part, by establishing a defensible space performance standard: "Fuels shall be maintained in a condition so that a fire passing through under average weather conditions would be unlikely to ignite the dwelling." For example, as of this January, any new home in a "very high fire hazard severity zone" must comply with minimum standards

dictating the use of “ignition resistant” materials. In a home with stucco siding, a fire-resistant roof and other risk-minimizing construction features is going to require less fuel modification than a home with open eaves and a wooden roof. Finally, the bill requires CAL FIRE to develop and periodically update guidelines on fuel management. A copy of CAL FIRE’S “General Guidelines for Creating Defensible Space” is attached. It was last updated on February 8, 2006 and, as such, has not yet incorporated changes to the law mandated by SB 1595. My staff spoke with Ethan Foote with the Office of the State Fire Marshall and Erny Lee Chamlee at the Department of Finance and both were aware of SB 1595 and of the new and expanded requirement set forth in the bill.

RECOMMENDATION

Enforcement of SB 1595 in LRA’S is going to be a matter of local concern. MRCA should meet and work with local officials and fire authorities to help ensure statewide conformance with the new wild fire prevention and “fuels management” standards required by SB 1595. MRCA should also notify and work with adjacent landowners who may not understand their responsibilities, and who may even face criminal liability for failing to maintain defensible space on their property.

Attachments:

1. SB 1595 (Chapter 366, Statutes 2008)
- 2, General Guidelines for Creating Defensible Space

Senate Bill No. 1595

CHAPTER 366

An act to amend Sections 51175, 51177, 51178, 51182, 51183, and 51189 of the Government Code, and to amend Sections 4202 and 4291 of the Public Resources Code, relating to public resources.

[Approved by Governor September 27, 2008. Filed with
Secretary of State September 27, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1595, Kehoe. Public resources: fire protection: fuels management: forest protection.

(1) Existing law requires that a person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material that is within a very high fire hazard severity zone, as designated by a local agency, maintain at all times a firebreak by removing all brush, flammable vegetation, or other combustible growth for a prescribed number of feet from the occupied dwelling or occupied structure, with exceptions, as well as take other required fire prevention actions.

A person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material, within a state responsibility area, is required to maintain at all times a firebreak by removing all brush, flammable vegetation, or other combustible growth for a prescribed number of feet from the dwelling or structure, with exceptions, as well as taking other required fire prevention actions. A violation of these provisions is a crime.

This bill would change the current brush clearance requirements and would instead require the owner or person in control of a qualified property to significantly reduce the risk of ignition of a habitable structure by maintaining defensible space, as prescribed, within a certain number of feet from the above-described dwellings, buildings, or structures. The bill would require the Department of Forestry and Fire Protection to develop, periodically update, and post on its Internet Web site a guidance document on fuels management.

Because this bill would change the definition of a crime, it would impose a state-mandated local program.

This bill would add to the criteria under which the Director of Forestry and Fire Protection designates an area as a very high fire hazard severity zone. The bill would also define various terms for purposes of these

provisions and revise legislative findings and declarations concerning fire risks and site fuel management.

(2) This bill would make conforming changes and delete obsolete provisions.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 51175 of the Government Code is amended to read:

51175. The Legislature hereby finds and declares as follows:

(a) Wildfires are extremely costly, not only to property owners and residents, but also to local agencies. Wildfires pose a serious threat to the preservation of the public peace, health, or safety. The wildfire front is not the only source of risk since embers, or firebrands, travel far beyond the area impacted by the front and pose a risk of ignition to a structure or fuel on a site for a longer time. Since fires ignore civil boundaries, it is necessary that cities, counties, special districts, state agencies, and federal agencies work together to bring raging fires under control. Preventive measures are therefore needed to ensure the preservation of the public peace, health, or safety.

(b) The prevention of wildland fires is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead, a matter of statewide concern. It is the intent of the Legislature that this chapter apply to all local agencies, including, but not limited to, charter cities, charter counties, and charter cities and counties. This subdivision shall not limit the authority of a local agency to impose more restrictive fire and public safety requirements, as otherwise authorized by law.

(c) It is not the intent of the Legislature in enacting this chapter to limit or restrict the authority of a local agency to impose more restrictive fire and public safety requirements, as otherwise authorized by law.

SEC. 2. Section 51177 of the Government Code is amended to read:

51177. As used in this chapter:

(a) "Defensible space" means the area adjacent to a structure or dwelling where wildfire prevention or protection practices are implemented to provide defense from an approaching wildfire or to minimize the spread of a structure fire to wildlands or surrounding areas.

(b) "Director" means the Director of Forestry and Fire Protection.

(c) "Fuel" means any combustible material, especially petroleum-based products and wildland fuels.

(d) "Fuel management" means the act or practice of controlling flammability and reducing resistance to control of fuels through mechanical,

chemical, biological, or manual means or by fire, in support of land management objectives.

(e) "Local agency" means a city, county, city and county, or district responsible for fire protection within a very high fire hazard severity zone.

(f) "Single specimen tree" means any live tree that stands alone in the landscape so as to be clear of buildings, structures, combustible vegetation, or other trees, and that does not form a means of rapidly transmitting fire from the vegetation to an occupied dwelling or structure or from an occupied dwelling or structure to vegetation.

(g) "State responsibility areas" means those areas identified pursuant to Section 4102 of the Public Resources Code.

(h) "Vegetation" means all plants, including trees, shrubs, grass, and perennial or annual plants.

(i) "Very high fire hazard severity zone" means an area designated by the director pursuant to Section 51178 that is not a state responsibility area.

(j) "Wildfire" means an unplanned, unwanted wildland fire, including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects, and all other wildland fires where the objective is to extinguish the fire.

SEC. 3. Section 51178 of the Government Code is amended to read:

51178. The director shall identify areas in the state as very high fire hazard severity zones based on consistent statewide criteria and based on the severity of fire hazard that is expected to prevail in those areas. Very high fire hazard severity zones shall be based on fuel loading, slope, fire weather, and other relevant factors including areas where Santa Ana, Mono, and Diablo winds have been identified by the Department of Forestry and Fire Protection as a major cause of wildfire spread.

SEC. 4. Section 51182 of the Government Code is amended to read:

51182. (a) A person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining any mountainous area, forest-covered land, brush-covered land, grass-covered land, or any land that is covered with flammable material, which area or land is within a very high fire hazard severity zone designated by the local agency pursuant to Section 51179, shall at all times do all of the following:

(1) Maintain defensible space no greater than 100 feet from each side of the structure, but not beyond the property line unless allowed by state law, local ordinance, or regulation and as provided in paragraph (2). The amount of fuel modification necessary shall take into account the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first

30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion.

(2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

(3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the fire chief or fire official from the authority having jurisdiction, provides findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

(4) Remove that portion of any tree that extends within 10 feet of the outlet of any chimney or stovepipe.

(5) Maintain any tree, shrub, or other plant adjacent to or overhanging any building free of dead or dying wood.

(6) Maintain the roof of any structure free of leaves, needles, or other vegetative materials.

(7) Prior to constructing a new dwelling or structure that will be occupied or rebuilding an occupied dwelling or occupied structure damaged by a fire in that zone, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its Internet Web site a guidance document

on fuels management pursuant to this chapter. Guidance shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, wood decks, and outdoor lawn furniture.

SEC. 5. Section 51183 of the Government Code is amended to read:

51183. (a) The local agency may exempt from the standards set forth in Section 51182 structures with exteriors constructed entirely of nonflammable materials, or conditioned upon the contents and composition of the structure, and may vary the requirements respecting the management of fuels surrounding the structures in those cases. This subdivision does not authorize a local agency to vary a requirement that is a building standard subject to Section 18930 of the Health and Safety Code, except as otherwise authorized by law.

(b) An exemption or variance under subdivision (a) shall not apply unless and until the occupant of the structure, or if there is no occupant, then the owner of the structure, files with the local agency a written consent to the inspection of the interior and contents of the structure to ascertain whether Section 51182 is complied with at all times.

SEC. 6. Section 51189 of the Government Code is amended to read:

51189. (a) The Legislature finds and declares that site and structure defensibility is essential to reduce the risk of structure ignition as well as for effective fire suppression by firefighters. This need to establish defensibility extends beyond the site fuel management practices required by this chapter, and includes, but is not limited to, measures that increase the likelihood of a structure to withstand ignition, such as building design and construction requirements that use fire resistant building materials, and provide standards for reducing fire risks on structure projections, including, but not limited to, porches, decks, balconies and eaves, and structure openings, including, but not limited to, attic, foundation, and eave vents, doors, and windows.

(b) No later than January 1, 2005, the State Fire Marshal, in consultation with the Director of Forestry and Fire Protection and the Director of Housing and Community Development, shall, pursuant to Section 18930 of the Health and Safety Code, recommend building standards that provide for comprehensive site and structure fire risk reduction to protect structures from fires spreading from adjacent structures or vegetation and to protect vegetation from fires spreading from adjacent structures.

SEC. 7. Section 4202 of the Public Resources Code is amended to read:

4202. The director shall classify lands within state responsibility areas into fire hazard severity zones. Each zone shall embrace relatively homogeneous lands and shall be based on fuel loading, slope, fire weather, and other relevant factors present, including areas where winds have been identified by the department as a major cause of wildfire spread.

SEC. 8. Section 4291 of the Public Resources Code is amended to read:

4291. (a) A person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with flammable material, shall at all times do all of the following:

(1) Maintain defensible space no greater than 100 feet from each side of the structure, but not beyond the property line unless allowed by state law, local ordinance, or regulation and as provided in paragraph (2). The amount of fuel modification necessary shall take into account the flammability of the structure as affected by building material, building standards, location, and type of vegetation. Fuels shall be maintained in a condition so that a wildfire burning under average weather conditions would be unlikely to ignite the structure. This paragraph does not apply to single specimens of trees or other vegetation that are well-pruned and maintained so as to effectively manage fuels and not form a means of rapidly transmitting fire from other nearby vegetation to a structure or from a structure to other nearby vegetation. The intensity of fuels management may vary within the 100-foot perimeter of the structure, the most intense being within the first 30 feet around the structure. Consistent with fuels management objectives, steps should be taken to minimize erosion.

(2) A greater distance than that required under paragraph (1) may be required by state law, local ordinance, rule, or regulation. Clearance beyond the property line may only be required if the state law, local ordinance, rule, or regulation includes findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. Clearance on adjacent property shall only be conducted following written consent by the adjacent landowner.

(3) An insurance company that insures an occupied dwelling or occupied structure may require a greater distance than that required under paragraph (1) if a fire expert, designated by the director, provides findings that such a clearing is necessary to significantly reduce the risk of transmission of flame or heat sufficient to ignite the structure, and there is no other feasible mitigation measure possible to reduce the risk of ignition or spread of wildfire to the structure. The greater distance may not be beyond the property line unless allowed by state law, local ordinance, rule, or regulation.

(4) Remove that portion of any tree that extends within 10 feet of the outlet of a chimney or stovepipe.

(5) Maintain any tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.

(6) Maintain the roof of a structure free of leaves, needles, or other vegetative materials.

(7) (a) Prior to constructing a new building or structure or rebuilding a building or structure damaged by a fire in an area subject to this section, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and

local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189 of the Government Code, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.

(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels, nor is a person required to enter upon or to alter property that is owned by any other person without the consent of the owner of the property.

(c) (1) Except as provided in Section 18930 of the Health and Safety Code, the director may adopt regulations exempting a structure with an exterior constructed entirely of nonflammable materials, or, conditioned upon the contents and composition of the structure, the director may vary the requirements respecting the removing or clearing away of flammable vegetation or other combustible growth with respect to the area surrounding those structures.

(2) An exemption or variance under paragraph (1) shall not apply unless and until the occupant of the structure, or if there is not an occupant, the owner of the structure, files with the department, in a form as the director shall prescribe, a written consent to the inspection of the interior and contents of the structure to ascertain whether this section and the regulations adopted under this section are complied with at all times.

(d) The director may authorize the removal of vegetation that is not consistent with the standards of this section. The director may prescribe a procedure for the removal of that vegetation and make the expense a lien upon the building, structure, or grounds, in the same manner that is applicable to a legislative body under Section 51186 of the Government Code.

(e) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its Internet Web site a guidance document on fuels management pursuant to this chapter. Guidance shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, wood decks, and outdoor lawn furniture.

(f) As used in this section, "person" means a private individual, organization, partnership, limited liability company, or corporation.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because

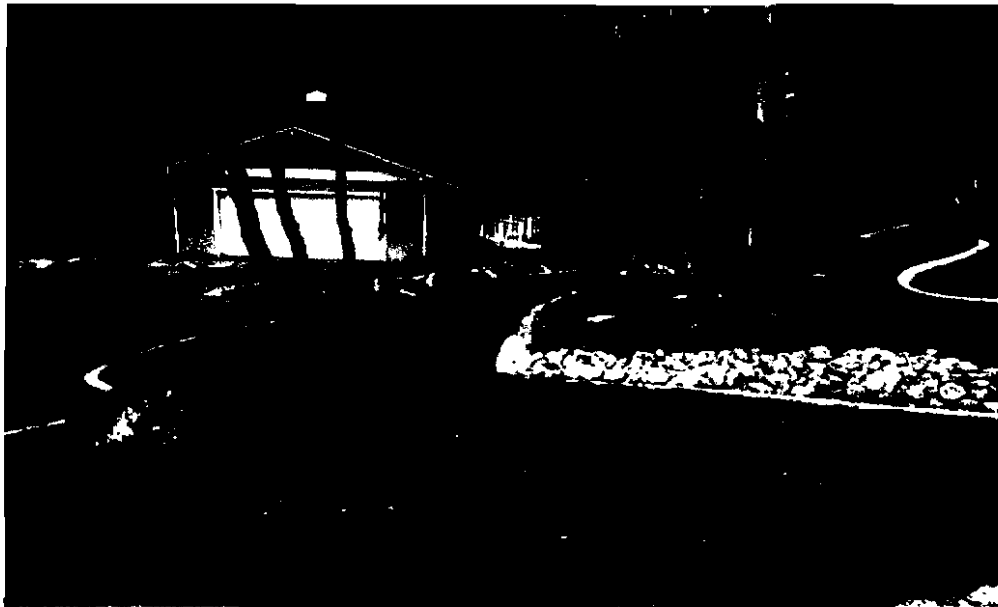
this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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General Guidelines for Creating Defensible Space

State Board of Forestry and Fire Protection (BOF)
California Department of Forestry and Fire Protection

Adopted by BOF on February 8, 2006
Pending Filing with Office of Administrative Law



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A. Purpose of Guidelines

Recent changes to Public Resources Code (PRC) 4291 expand the defensible space clearance requirement maintained around buildings and structures from 30 feet to a distance of 100 feet. These guidelines are intended to provide property owners with examples of fuel modification measures that can be used to create an area around buildings or structures to create defensible space. A defensible space perimeter around buildings and structures provide firefighters a working environment that allows them to protect buildings and structures from encroaching wildfires as well as minimizing the chance that a structure fire will escape to the surrounding wildland. These guidelines apply to any person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or any land that is covered with flammable material, and located within a State Responsibility Area.



Effective defensible space

The vegetation surrounding a building or structure is fuel for a fire. Even the building or structure itself is considered fuel. Research and experience have shown that fuel reduction around a building or structure increases the probability of it surviving a wildfire. Good defensible space allows firefighters to protect and save buildings or structures safely without facing unacceptable risk to their lives. Fuel reduction through vegetation management is the key to creating good defensible space.

Terrain, climate conditions and vegetation interact to affect fire behavior and fuel reduction standards. The diversity of California's geography also influences fire behavior and fuel reduction standards as well. While fuel reduction standards will vary throughout the State, there are some common practices that guide fuel modification treatments to ensure creation of adequate defensible space:

- Properties with greater fire hazards will require more clearing. Clearing requirements will be greater for those lands with steeper terrain, larger and denser fuels, fuels that are highly volatile, and in locations subject to frequent fires.
- Creation of defensible space through vegetation management usually means reducing the amount of fuel around the building or structure, providing separation between fuels, and or reshaping retained fuels by trimming. Defensible space can be created removing dead vegetation, separating fuels, and pruning lower limbs.
- In all cases, fuel reduction means arranging the tree, shrubs and other fuels sources in a way that makes it difficult for fire to transfer from one fuel source to another. It does not mean cutting down all trees and shrubs, or creating a bare ring of earth across the property.
- A homeowner's clearing responsibility is limited to 100 feet away from his or her building or structure or to the property line, whichever is less, and limited to their land. While individual property owners are not required to clear beyond 100 feet, groups of property owners are encouraged to extend clearances beyond the 100 foot requirement in order to create community-wide defensible spaces.
- Homeowners who do fuel reduction activities that remove or dispose of vegetation are required to comply with all federal, state or local environmental protection laws and obtain permits when necessary. Environmental protection laws include, but are not limited to, threatened and endangered species, water quality, air quality, and cultural/archeological resources. For example, trees removed for fuel reduction that are used for commercial purposes require permits from the

California Department of Forestry and Fire Protection. Also, many counties and towns require tree removal permits when cutting trees over a specified size. Contact your local resource or planning agency officials to ensure compliance.

The methods used to manage fuel can be important in the safe creation of defensible space. Care should be taken with the use of equipment when creating your defensible space zone. Internal combustion engines must have an approved spark arresters and metal cutting blades (lawn mowers or weed trimmers) should be used with caution to prevent starting fires during periods of high fire danger. A metal blade striking a rock can create a spark and start a fire, a common cause of fires during summertime.

Vegetation removal can also cause soil disturbance, soil erosion, regrowth of new vegetation, and introduce non-native invasive plants. Always keep soil disturbance to a minimum, especially on steep slopes. Erosion control techniques such as minimizing use of heavy equipment, avoiding stream or gully crossings, using mobile equipment during dry conditions, and covering exposed disturbed soil areas will help reduce soil erosion and plant regrowth.

Areas near water (riparian areas), such as streams or ponds, are a particular concern for protection of water quality. To help protect water quality in riparian areas, avoid removing vegetation associated with water, avoid using heavy equipment, and do not clear vegetation to bare mineral soil.

B. Definitions

Defensible space: The area within the perimeter of a parcel where basic wildfire protection practices are implemented, providing the key point of defense from an approaching wildfire or escaping structure fire. The area is characterized by the establishment and maintenance of emergency vehicle access, emergency water reserves, street names and building identification, and fuel modification measures.

Aerial fuels: All live and dead vegetation in the forest canopy or above surface fuels, including tree branches, twigs and cones, snags, moss, and high brush. Examples include trees and large bushes.

Building or structure: Any structure used for support or shelter of any use or occupancy.

Flammable and combustible vegetation: Fuel as defined in these guidelines.

Fuel Vegetative material, live or dead, which is combustible during normal summer weather. For the purposes of these guidelines, it does not include fences, decks, woodpiles, trash, etc.

Homeowner: Any person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining any mountainous area, forest-covered lands, brush-covered lands, grass-covered lands, or any land that is covered with flammable material, and located within a State Responsibility Area.

Ladder Fuels: Fuels that can carry a fire vertically between or within a fuel type.

Reduced Fuel Zone: The area that extends out from 30 to 100 feet away from the building or structure (or to the property line, whichever is nearer to the building or structure).

Surface fuels: Loose surface litter on the soil surface, normally consisting of fallen leaves or needles, twigs, bark, cones, and small branches that have not yet decayed enough to lose their identity; also grasses, forbs, low and medium shrubs, tree seedlings, heavier branches and downed logs.

C. Fuel Treatment Guidelines

The following fuel treatment guidelines comply with the requirements of 14 CCR 1299 and PRC 4291. All persons using these guidelines to comply with CCR 1299 and PRC 4291 shall implement General Guidelines 1., 2., 3., and either 4a or 4b., as described below.

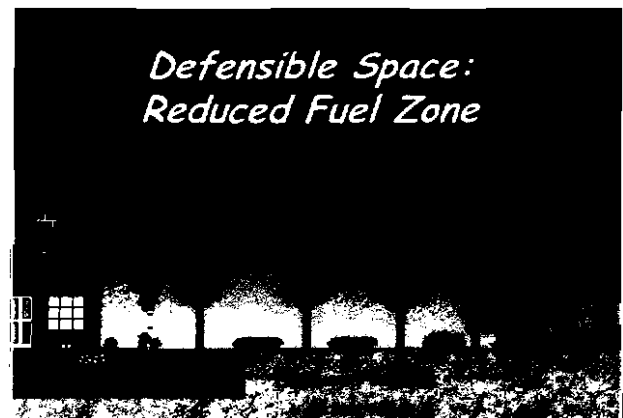
General Guidelines:

1. Maintain a firebreak by removing and clearing away all flammable vegetation and other combustible growth within 30 feet of each building or structure, with certain exceptions pursuant to PRC §4291(a). Single specimens of trees or other vegetation may be retained provided they are well-spaced, well-pruned, and create a condition that avoids spread of fire to other vegetation or to a building or structure.
2. Dead and dying woody surface fuels and aerial fuels within the Reduced Fuel Zone shall be removed. Loose surface litter, normally consisting of fallen leaves or needles, twigs, bark, cones, and small branches, shall be permitted to a depth of 3 inches. This guideline is primarily intended to eliminate trees, bushes, shrubs and surface debris that are completely dead or with substantial amounts of dead branches or leaves/needles that would readily burn.
3. Down logs or stumps anywhere within 100 feet from the building or structure, when embedded in the soil, may be retained when isolated from other vegetation. Occasional (approximately one per acre) standing dead trees (snags) that are well-spaced from other vegetation and which will not fall on buildings or structures or on roadways/driveways may be retained.
4. Within the Reduced Fuel Zone, one of the following fuel treatments (4a. or 4b.) shall be implemented. Properties with greater fire hazards will require greater clearing treatments. Combinations of the methods may be acceptable under §1299(c) as long as the intent of these guidelines is met.

4a. Reduced Fuel Zone: Fuel Separation

In conjunction with General Guidelines 1., 2., and 3., above, minimum clearance between fuels surrounding each building or structure will range from 4 feet to 40 feet in all directions, both horizontally and vertically.

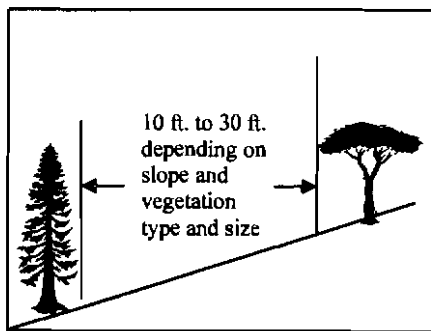
Clearance distances between vegetation will depend on the slope, vegetation size, vegetation type (brush, grass, trees), and other fuel characteristics (fuel compaction, chemical content etc.). Properties with greater fire hazards will require greater separation between fuels. For example, properties on steep slopes having large sized vegetation will require greater spacing between individual trees and bushes (see Plant Spacing Guidelines and Case Examples below). Groups of vegetation (numerous plants growing together less than 10 feet in total foliage width) may be treated as a single plant. For example, three individual manzanita plants growing together with a total foliage width of eight feet can be "grouped" and considered as one plant and spaced according to the Plant Spacing Guidelines in this document.



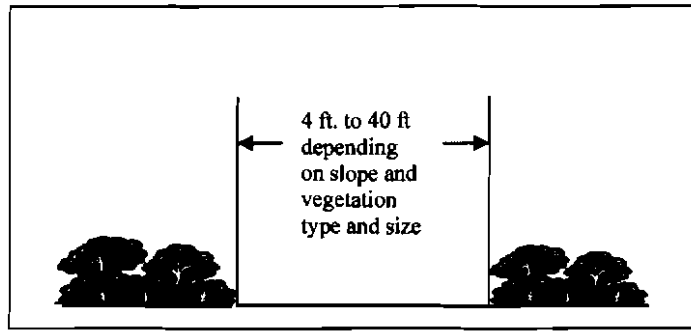
Grass generally should not exceed 4 inches in height. However, homeowners may keep grass and other forbs less than 18 inches in height above the ground when these grasses are isolated from other fuels or where necessary to stabilize the soil and prevent erosion.

Clearance requirements include:

- Horizontal clearance between aerial fuels, such as the outside edge of the tree crowns or high brush. Horizontal clearance helps stop the spread of fire from one fuel to the next.



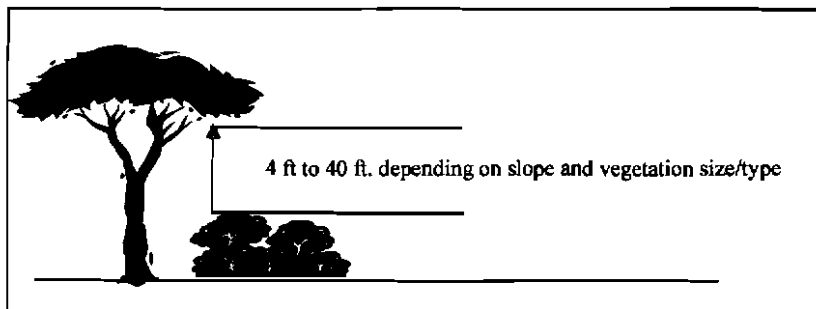
Trees



Shrubs

Horizontal clearance between aerial fuels

- Vertical clearance between lower limbs of aerial fuels and the nearest surface fuels and grass/weeds. Vertical clearance removes *ladder fuels* and helps prevent a fire from moving from the shorter fuels to the taller fuels.



Vertical clearance between aerial fuels



*Effective vertical and horizontal fuel separation
Photo Courtesy
Plumas Fire Safe Council.*

Plant Spacing Guidelines		
Guidelines are designed to break the continuity of fuels and be used as a "rule of thumb" for achieving compliance with Regulation 14 CCR 1299.		
Trees	Minimum horizontal space from edge of one tree canopy to the edge of the next	
	Slope	Spacing
	0% to 20 %	10 feet
	20% to 40%	20 feet
	Greater than 40%	30 feet
Shrubs	Minimum horizontal space between edges of shrubs	
	Slope	Spacing
	0% to 20 %	2 times the height of the shrub
	20% to 40%	4 times the height of the shrub
	Greater than 40%	6 times the height of the shrub
Vertical Space	Minimum vertical space between top of shrub and bottom of lowest tree branches 3 times the height of the shrub	

Adapted from: Gilmer, M. 1994. California Wildfire Landscaping





4b. Reduced Fuel Zone: Defensible Space with Continuous Tree Canopy

To achieve defensible space while retaining a stand of larger trees with a continuous tree canopy apply the following treatments:

- Generally, remove all surface fuels greater than 4 inches in height. Single specimens of trees or other vegetation may be retained provided they are well-spaced, well-pruned, and create a condition that avoids spread of fire to other vegetation or to a building or structure.
- Remove lower limbs of trees ("prune") to at least 6 feet up to 15 feet (or the lower 1/3 branches for small trees). Properties with greater fire hazards, such as steeper slopes or more severe fire danger, will require pruning heights in the upper end of this range.

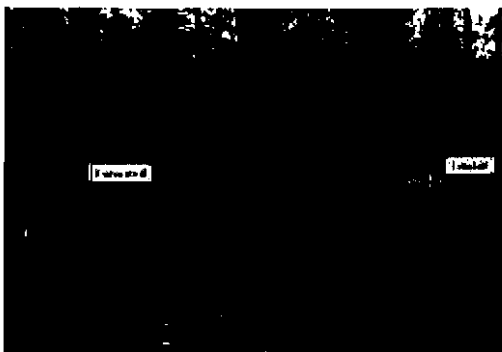
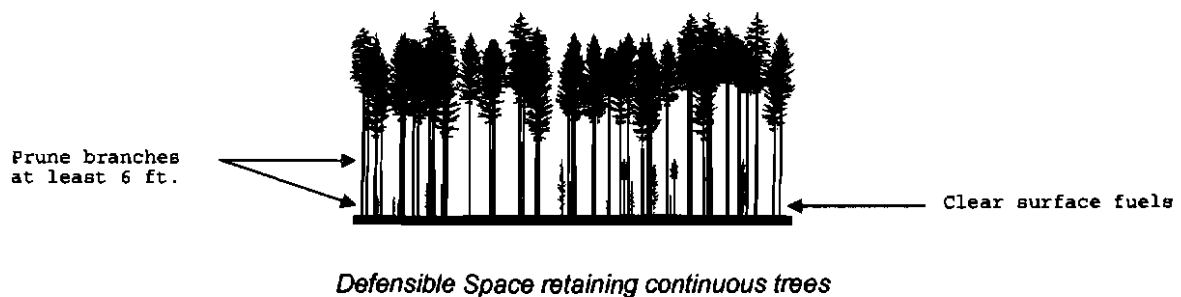


Photo Courtesy Plumas Fire Safe Council.

Defensible space with continuous tree canopy by clearing understory and pruning

Authority cited: Section 4102, 4291, 4125-4128.5, Public Resource Code. Reference: 4291, Public Resource Code; 14 CCR 1299 (d).